



Security Council

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Letter dated 25 August 2005 from the Chargé d'affaires a.i. of the Permanent Mission of France to the United Nations addressed to the Chairman of the Committee

By a letter dated 5 July 2005 you transmitted to me, in your capacity as Chairman of the Security Council Committee established pursuant to resolution 1540 (2004), the Committee's request for information additional to that contained in the report submitted by France in accordance with the said resolution.

On behalf of my Government, I have the honour to transmit to you herewith the response of France to that request (see annex).

I should be grateful if you would have that document, together with the present letter, circulated to the members of the Committee.

(Signed) Michel **Duclos**
Chargé d'affaires a.i.



**Annex to the letter dated 25 August 2005 from the Chargé
d'affaires a.i. of the Permanent Mission of France to the
United Nations addressed to the Chairman of the Committee**

**Response of France to the request for additional information
issued by the Security Council Committee established pursuant
to resolution 1540 (2004)**

Biological domain

The monitoring of biological substances posing a proliferation risk is effected in accordance with the Public Health Code, the decree of 30 July 2004 classifying certain viruses, bacteria and toxins as belonging in the list of poisonous substances and the decree of the same date concerning the use, import, export, possession, transfer free of charge or for valuable consideration, acquisition and transport of certain agents responsible for infectious diseases, pathogenic micro-organisms and toxins.

These texts impose, for the substances which they cover, a system of prior authorization for all the operations mentioned above. It should be noted that the provisions in question apply also to genetically modified organisms derived from or making up genetic elements of such agents and to products containing the pathogenic micro-organisms and toxins covered.

Such authorization, which bears the name of the grantee, is issued by the Director of the Agence française de sécurité sanitaire des produits de santé (AFSSAPS — French Health Products Safety Agency).

Every act of acquisition or disposal is entered in a special register that is numbered and initialled by the mayor or the police commissioner. The special register is kept for 10 years from the date of the last operation mentioned, so as to be able to be produced upon any request by the competent authorities.

Holders of the authorization provided for by the said decree are required to submit a yearly statement summarizing, for every agent, pathogenic micro-organism and toxin, identified by its strain, species and variety or by its nature, the following:

1. The quantities acquired;
2. The stock on hand at the end of the year, including stocks of agents, pathogenic micro-organisms and toxins in process of transformation;
3. The quantities used for production or transformation, with an indication of their strain, species, variety or nature and the quantity of agent, pathogenic micro-organism or toxin obtained;
4. The quantities transferred.

The summary statement, moreover, may at any time be demanded by the Director General of the Agence française de sécurité sanitaire des produits de santé.

Any theft or misappropriation must be reported without delay to the police authorities, the office of the regional pharmacy inspector and the Agence française de sécurité sanitaire des produits de santé.

The administrative and penal sanctions associated with the authorization system established by the decree of 30 July 2004 are those provided by article L. 5432-1 of the Public Health Code, which provides for penal sanctions under the laws on poisonous substances (failure to comply with the regulatory provisions contained in article L. 5132-8 is punishable by two years' imprisonment and a fine of 3,750 euros). Articles L. 5312-1 and L. 5312-2 define the health-inspection role of the Agence and the administrative sanctions, which consist in the withdrawal of authorizations granted.

Chemical domain

Law No. 98-467 of 17 June 1998 on the application of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Paris Convention, Chemical Weapons Convention), mentioned in the report submitted by France under Security Council resolution 1540 (2004), was repealed on 20 December 2004.

The provisions of the said Law have been incorporated into the Defence Code (articles L. 2342-1 to L. 2342-84).

Regarding the verification of quantities of products involved, the principal measures that apply to the chemical sphere are as follows:

- **Schedule 1:** The development, production, acquisition, transfer, use, possession, preservation, stockpiling, import, export and transit of and trading and brokering in chemicals listed in Schedule 1 ("Schedule 1 chemicals") are prohibited except for medical, pharmaceutical, research or protection purposes, in which case the quantities are limited strictly to those warranted by those purposes (article L. 2342-8, paragraph 1).

When not prohibited under paragraph 1, the development, production, acquisition, transfer, use, possession, preservation and stockpiling of Schedule 1 chemicals are subject to authorization. The authorization specifies the quantities for which it is granted. Certain manufactures, however, are not subject to authorization, especially when the annual quantities fall short of the established thresholds (article L. 2342-10). Nevertheless, the production of a Schedule 1 chemical, whether an authorization has been issued in respect of it or not, must be declared to the administrative authority (articles L. 2342-8 to L. 2342-10). Facilities for the processing, stockpiling or consumption of Schedule 1 chemicals are subject to declaration (article L. 2342-11).

The import, export and transit of Schedule 1 chemicals are prohibited where such chemicals have come from or are intended for a State not a party to the Paris Convention.

In other cases, import and export operations are subject to authorization and prior declaration (article L. 2342-8).

- **Schedule 2:** The production, processing and consumption of chemicals listed in Schedule 2 annexed to the Convention are subject to declaration (article L. 2342-12). Facilities for the production, stockpiling or consumption of Schedule 2 chemicals are subject to declaration if they produce, process or consume quantities in excess of the specified thresholds (article L. 2342-14).

The import and export of and trading and brokering in Schedule 2 chemicals from or intended for a State not a party to the Paris Convention are prohibited (article L. 2342-13).

- **Schedule 3:** The production of chemicals listed in Schedule 3 to the Convention is subject to declaration (article L. 2342-15). Facilities for the production of Schedule 3 chemicals are subject to declaration if they produce quantities in excess of the specified thresholds.

The export of Schedule 3 chemicals to a State not a party to the Paris Convention is subject to authorization. Such authorization shall be denied if the destination State fails to provide, upon being so requested by the administrative authority, an end-use certificate and a non-re-exportation certificate (article L. 2342-16).

Importers and exporters of chemicals listed in any of the three Schedules or their representatives must inform the administrative authorities of the operations carried out (article L. 2342-19).

Defined organic chemicals: Facilities for the production by synthesis of defined organic chemicals not listed in any of the three Schedules to the Convention are subject to declaration if they produce quantities in excess of the specified thresholds (article L. 2342-17).

- **Inspections:** Articles L. 2342-51 and L. 2342-52 of the Defence Code provide that the administrative authority may undertake, or have a qualified public establishment undertake, inquiries concerning chemicals listed in any of the three Schedules or defined organic chemicals.

The agents charged with conducting such inspections shall have the right, in particular, to gain access to facilities, obtain documents pertaining to the operation under consideration, take samples or have samples taken in their presence, if necessary, under conditions fixed by decree in the Council of State.

- **Penal sanctions:** Articles L. 2342-57 to L. 2342-81 provide penal sanctions for infractions of the legislation concerning inspections. The following articles may be mentioned in particular:

Article L. 2342-65: The failure on the part of the operator of any of the facilities indicated below to make the required declaration shall be punishable by two years' imprisonment and a fine of 30,000 euros:

- (1) A facility for the production, stockpiling, preservation or destruction of chemical weapons or a facility for the production of unfilled chemical munitions or materials intended for chemical weapons use;
- (2) Any other facility or establishment designed, built or used primarily for developing chemical weapons, including laboratories and test and evaluation sites.

Article L. 2342-68: The following are punishable by seven years' imprisonment and a fine of 100,000 euros:

- (1) The operation of a facility for the production of Schedule 1 chemicals for medical, pharmaceutical, research or protection purposes without

authorization, if such authorization is required, or in violation of the terms of an authorization granted;

- (2) The import, export or transit of, or trade or brokering in, Schedule 1 chemicals for medical, pharmaceutical, research or protection purposes which come from or are intended for a State not a party to the Paris Convention.

Article L. 2342-69: The following are punishable by three years' imprisonment and a fine of 45,000 euros:

- (1) The development, production, acquisition, transfer, use, possession, preservation or stockpiling of Schedule 1 chemicals done for medical, pharmaceutical, research or protection purposes without authorization or in violation of authorizations granted;
- (2) The unauthorized import, export or transit of, or trade or brokering in, Schedule 1 chemicals for medical, pharmaceutical, research or protection purposes where such chemicals were obtained from or are intended for a State Party to the Paris Convention.

Article L. 2342-70: The following are punishable by two years' imprisonment and a fine of 30,000 euros:

- (1) Failure to declare a facility for the processing, stockpiling or consumption of Schedule 1 chemicals;
- (2) Trading or brokering in Schedule 2 chemicals coming from or intended for a State not a party to the Paris Convention;
- (3) Failure on the part of the operator to provide yearly information concerning the quantities of Schedule 1 chemicals produced, acquired, transferred, processed, consumed or stockpiled by him; the quantities of precursors listed in any of the three Schedules used by him in the production of such chemicals; or the quantities of such products which he expects to produce during the next year.

Article L. 2342-71: Unauthorized trading or brokering in Schedule 3 chemicals intended for a State not a party to the Paris Convention is punishable by a year's imprisonment and a fine of 15,000 euros.

- **Administrative sanctions** (articles L. 2342-82 to L. 2342-84): A daily penalty of up to 7,500 euros or 0.1 per cent of the turnover may be imposed by the administrative authority in the event of a refusal to submit to inspections.

Furthermore, when notice has been given regarding a failure to comply with a declaration requirement established for Schedule 2 and 3 chemicals or facilities or for facilities producing defined organic chemicals and no reply is forthcoming within two weeks' time, the administrative authority may, by means of a decision stating the grounds, impose a fine of up to 75,000 euros.

Nuclear domain

Law 80-572 of 25 July 1980, mentioned in the report submitted by France under Security Council resolution 1540 (2004), was repealed on 20 December 2004.

The revised provisions of the said Law have been incorporated into the Defence Code (articles L. 1333-1 to L. 1333-13).

This legislation establishes a system of prior authorization for the exercise of the import, export, production, possession, transfer, use or transport of fusible, fissile or fertile nuclear material or any material, with the exception of ore, containing one or more fusible, fissile or fertile elements.

- The act of improperly appropriating nuclear materials governed by the provisions of this chapter, of exercising, without authorization, the activities specified above or of knowingly providing incorrect information for the purpose of obtaining such authorization shall be punishable by 10 years' imprisonment and a fine of 7,500,000 euros.
- Anyone who, being the holder of such an authorization or being responsible in any capacity for the safekeeping of the nuclear materials referred to or the management thereof, has become aware of the loss, theft, disappearance or misappropriation of such materials and has not reported it to the police or gendarmerie services within 24 hours at most after becoming aware thereof, shall be punishable by two years' imprisonment and a fine of 37,500 euros. If the holder of the authorization is a juridical person, the same penalties shall be applicable to its executives if they have gained knowledge of such loss, theft, disappearance or misappropriation and have failed to report it within the specified time limit.

The legislation set up an inspection system that involves both the administrative, technical and accounting aspects of authorized activities and measures designed to prevent the theft or misappropriation of nuclear materials. Such inspection is performed in the first place by the nuclear operator and secondly by the public authorities (the Senior Defence Official of the Ministry of Industry), who have at their disposal sworn agents cleared by the State authorities, the nuclear materials inspectors.

- Interference with the performance of the inspection provided for by law and the supplying of incorrect information are punishable by two years' imprisonment and a fine of 7,500 euros.

Decree No. 81-512 of 12 May 1981 concerning the protection and inspection of nuclear materials, as defined in Law No. 80-572 of 25 July 1980, lays down the terms and conditions for the granting of the authorization to which the said Law refers and defines the obligations of natural or artificial persons who are holders thereof with respect to the monitoring of accounting, confinement and supervision, physical protection of materials, equipment, premises and installations and also with respect to protection during transport. The nuclear materials in question are: plutonium, uranium, thorium, deuterium, tritium and lithium-6. They are classified under three categories on the basis of criteria relating to their nature and quantitative criteria based on their desirability, or in other words, the interest which ill-intentioned individuals might have in stealing or misappropriating them. This classification determines the degree of protection to which they are subject, the strictest measures in terms of security applying to the most sensitive category.

- Articles 3 to 9 specify the terms and conditions of the granting, suspension and revocation of authorizations. They also determine the material thresholds

beyond which an authorization is required, short of which a declaration must be made to the public authorities (Ministry of the Industry).

- Articles 10 to 12 lay down the obligations of the holder of an authorization with respect to nuclear material monitoring and accounting and, in particular, precise knowledge of quantities, their location and movements.
- Articles 13 to 16 lay down the obligations relating to confinement, supervision and physical protection of nuclear materials in establishments and facilities:
 - For category III materials, the obligation to use and store them within an area to which access is controlled;
 - For category II materials, the obligation to use and store them within a protected, controlled-access area (under constant surveillance by guards or security devices and surrounded by a physical barrier with a limited number of points of entry under appropriate control);
 - For category I materials, the obligation to use and store them within a highly protected area, in other words a protected area as defined for category II above, to which, in addition, access is restricted to persons who have been established as offering every security guarantee, and which is under surveillance by guards who are in close communication with appropriate public rapid-deployment forces.

Specific measures taken in this context should be designed for the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

In the case of internal transfers between areas within the same establishment, protective measures during transfer must be of a level equivalent to that of the protective measures applied in the areas where the nuclear materials are stored.

Generally speaking, the measures for physical protection applied within the establishment or facility must be known only to the persons regularly authorized for that purpose by the holder of the authorization.

- Articles 17 to 24 establish the conditions for the protection of nuclear materials during transportation. They specify the terms and conditions of the protection of the most sensitive transports (categories I and II) by an escort. Such transportation is subject to specific administrative conditions (authorization, route approval, prior agreement and constant control of execution).

Decree No. 81-558 of 15 May 1981, on the protection and inspection of nuclear materials in defence field, supplements the above system.

In addition, every operator must demonstrate, within the framework of a security study, the consistency and adequacy of the overall system for the protection and control of the category I nuclear materials in his possession.

Common provisions related to security and physical protection

1. The physical protection of facilities exhibiting a proliferation risk is governed in France by articles L. 1332-1 to L. 1332-7 of the Defence Code.

French nuclear facilities intended for research or energy production and the industrial sites (chemistry, biology) considered the most sensitive with respect to their war potential and their economic potential and in terms of security and the survival of the population are classified as "installations of vital importance" (I2V) to the nation. This classification makes it an obligation for the operator to put in place physical protection measures aimed at preventing any malevolent act or sabotage.

Sanctions: Failure on the part of executives of the enterprises concerned to establish a protection plan or carry out the work called for, within the time limit set in a formal notice issued to that effect, is punishable by a fine of 150,000 euros.

Failure on the part of the same persons, upon being given formal notice, to maintain previously established protection systems in proper condition is punishable by a fine of 150,000 euros.

The protection of facilities rests on close cooperation between operators and the public authorities. Such cooperation implies placing responsibility on the directors of facilities, who are required to put in place:

- A security management policy;
- A human and physical protection system (intrusion detection and delaying barrier) in accordance with the principle of in-depth defence (detection, delay, response), which is subjected to a system of inspection by the authorities;
- Surveillance of personnel working at or having access to sites (administrative inquiries, clearance, etc.).

2. In addition to publishing the regulations defining the securing of sensitive sites and threats, the public authorities make sure of the protection and external defence of facilities — including aerial protection — and the intervention of police and security forces if need be.

3. Other, non-nuclear, facilities may be made subject to specific regulations derived from European directive 96/82/CE of 9 December 1996 (SEVESO II). The application of this directive concerns more than 1,200 establishments in France belonging primarily to the petroleum and chemical sectors. It is applied in France by means of Law No. 76-663 on classified facilities, the related implementing decree of 21 September 1977 and the ministerial decree of 10 May 2000. These texts require operators to assess all accident risks and factors of aggression, including risks connected with malicious acts. The operator takes stock of the hazardous substances present in the establishment and keeps the prefect informed thereof. He must also provide against any risk of intrusion, adopting apposite security measures (fences around buildings, locking of doors to storage areas, access-control system and possibly 24-hour-a-day guarding with video surveillance). The management of sites classified "Seveso" is controlled by the Direction régionale de l'industrie, de la recherche et de l'environnement (Regional Directorate for Industry, Research and the Environment) of the Ministry of Economy, Finance and Industry.

4 In the interest of preventing the communication of knowledge or know-how that might make its way into proliferation programmes, Interministerial Directive No. 486 of 1 March 1993, on the protection of the national scientific, economic and technical patrimony, makes it a requirement for every executive of an establishment having a restrictive regime or controlled access to apply for authorization from the Senior Defence Official of his supervisory Ministry (Ministry of Industry in the case of enterprises, Ministry of Research in the case of laboratories) in order to receive a visitor or trainee who is not a national of a member of the European Union.

Means-of-delivery domain

The Decree-Law of 18 April 1939, creating the regime for war material, arms, and munitions, establishes a classification into eight categories, the first three of which are placed under the heading "war material", which comprises both weapons proper and military means for implementation or protection. Missiles, as potential means of delivery of weapons of mass destruction, are considered war material.

The possession of such materials is prohibited for private individuals, save in case of express authorization subject to specific conditions. Manufacturing them and trading in them are subject to prior authorization of limited duration, issued by the Ministry of Defence. The inspections which apply to holders of an authorization to manufacture or trade in war material are extensive. They are carried out both on documents and on site and cover all "technical and accounting operations, particularly with regard to production, improvements made in manufacturing ..." No obstacle must hamper the action of the representatives of the Ministry of Defence, who may demand to be provided with all documents which they consider useful for performing their task.

The importation of the materials in the first six categories (including war material) is prohibited, except in case of derogation, established by decree.